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ABSTRACT

With declining enrollments projected for the next decade and program discontinuance and retrenchment already a reality at many campuses, the retraining of tenured faculty to teach in a new discipline has been a critical issue for both faculty and administrators. The American Association of University Professors (AAUP) and the courts offer different interpretations of what constitutes fiscal exigency as the grounds for the dismissal of tenured faculty, and slightly different positions on whether a tenured faculty member is entitled to retraining. The AAUP suggests that retraining take place when program discontinuance occurs for educational considerations and not because of financial necessity, while the courts have not considered retraining a right under any circumstances. Several factors support these policies: (1) the discontinuance of particular programs may have less negative consequences than the more generalized loss of vitality that could occur from across-the-board dismissals of junior faculty; (2) retraining a faculty member for one or two semesters cannot give the instructor the discipline expertise of a novice instructor training for years in that field; (3) a faculty member teaching out of his/her area of expertise out of necessity may suffer a lack of motivation; (4) the academic vitality of a college depends on a mix of younger and older, junior and senior faculty and the teaching qualifications of instructors; and (5) sabbatical leaves are being alloted more and more frequently for retraining, rather than the equally important scholarly growth and development. Dealing effectively with retraining and retrenchment requires strong leadership on the part of the college president and equally strong leadership and participation by the college faculty in academic program review, budget analysis, and, ultimately, declaring a state of fiscal exigency. (AYC)

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POLICY ISSUES AT THE COMMUNITY COLLEGE:

ESSAYS BY FELLOWS

IN THE MID-CAREER FELLOWSHIP PROGRAM

AT PRINCETON UNIVERSITY

MAY 1987

RETRAINING FACULTY AT THE COMMUNITY COLLEGE

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With declining enrollments projected for the next decade and program discontinuance and retrenchment already a reality on many college campuses, the retraining of tenured faculty to teach in a new discipline has become a critical issue for both faculty and administrators. Community colleges, which must be especially responsive to changing community needs, tend to offer, alter and withdraw programs of instruction more rapidly than other colleges and universities. They, therefore, have to deal with the repercussions of program discontinuance more often.

The question that needs to be addressed first, of course, is whether tenure includes the right of the faculty member to be retrained. A brief review of the history of the tenure system and its implications for retrenchment, program discontinuance and faculty retraining is presented before discussing retraining and its philosphical, legal and pragmatic concerns.

Tenure began as a European custom and practice in higher education that teaching and research should be free from political or governmental regulation. In the United States the principles of academic freedom and tenure, first formulated by the Ammerican Association of University Professors (AAUP) in 1915, were reformulated in 1940 jointly by the Assoication of American Colleges (AAC) and the AAUP. This 1940 statement describes academic freedom as freedom in research, teaching and learning and describes tenure as a means of securing that freedom, therefore, providing

economic security to attract and retain people of ability to the teaching profession (Benson, 1983).

Usually, after a faculty member has completed a probationary period, tenure secures for him a limited right to continued employment. Tenured faculty may be dismissed for cause but there is no uniform definition of what constitutes good cause (Benson, 1983). Tenure status is a legal entitlement to continuous employment terminable for cause or by reason of disability, mandatory retirement, program discontinuance or financial exigency (Gray, 1981). "Most observers of the tenure debate acknowledge that tenure was not intended as a guarantee of lifetime employment (Craven, 1981, p.130)." Rather tenure status brings with it a legal entitlement to certain due process requirements prior to dismissal (Gray, 1981). The requirements differ whether the dismissal is for cause or by reason of financial exigency. Only the requirements for financial exigency and, more specifically, for program discontinuance are of concern here.

The AAUP defines financial exigency as "an imminent financial crisis which threatens the survival of the institution as a whole (AAUP, 1976, p.17)." The meaning of AAUP's "survival" standard is that the institution would have to close if it did not dismiss tenured faculty and also implies that before deciding to dismiss tenured faculty to prevent closure, a college has first tried other remedial measures to alleviate the severe financial problems (Gray,

1981). However, the courts have not adopted this "survival" standard in determining whether a financial exigency exists. For a detailed discussion of the key court decisions involving tenure and financial exigency the reader is directed to Benson (1983) and Gray (1981). With apologies to John Gray, a very abbreviated summary of the outcomes of these court decisions is presented here.

___Both the academic community and the courts recognize financial exigency as a legitimate ground for dismissal of tenured faculty.

___Unless specifically excluded by contract, financial exigency is implied in every tenure contract.

___AAUP's "survival" standard is not implied. The court's "operating funds" standard is more prevalent and not restricted to the institution as a whole. It may be applied to a single division at the institution.

___Institutions, not the courts, decide whether there is a state of financial exigency. But the courts will review whether the decision is arbitrary or capricious.

___Colleges can lay off tenured faculty for financial reasons only if they comply with certain procedural safeguards to ensure good faith.

___Dismissals must be bona fide; that is, motivated and caused solely and exclusively by considerations of financial exigency. Bad faith dismissals include those motivated by an antitenure bias or where the college failed to apply uniformly objective standards or failed to make a reasonable effort to find an alternative "suitable position" for the dismissed faculty.

___The "suitable position" requirement does not entitle the dismissed faculty member to training for appointment to a position available in another discipline.

___To fill an authorized position for which two tenured faculty members are qualified, there is no inherent, implied right to be preferred by reason of seniority of service.

The AAUP, in its Recommended Institutional Regulations (1976), also makes a distinction between discontinuance of

programs and departments in the absence of financial exigency and retrenchment because of financial exigency. While the college has a duty to attempt to find another suitable position for the faculty member in both situations, the AAUP recommends retraining only when program discontinuance is not due to financial exigency.

But do we want the courts, or even the AAUP to be making these decisions? I think not. What is required is strong leadership on the part of the college president and equally strong leadership and participation by the college faculty in academic program review, budget analysis and ultimately, if necessary, in declaring a state of financial exigency. Ironically, just when many campuses are facing cutbacks and retrenchment, there is a perceived decline in faculty participation in campus governance. Once strong faculty senates now find it difficult to get enough candidates to fill available positions and the influence of the senate in all areas of institutional policy except curriculum and degree requirements is rated low by college presidents (Carnegie Foundation, 1982).

Faculty cannot hide behind the threat of a "Yeshiva decision" and refuse to participate in decisions affecting the whole college community. Participation in academic governance does not make one a managerial employee (Maganzini,1986). More importantly, by not participating faculty allow administrators to take complete control, which in turn fosters an attitude among the faculty of

"look what they did to us," and then winds up being fought in the courts again. Certainly this does nothing to foster any sense of collegiality or shared decision making at the college.

The academic community must reach agreement on accommodating faculty interests in preserving academic freedom and tenure and the institution's interest in remaining financially viable. To do this faculty must engage in "preexigency planning"___preventive budgetary planning designed to avert a state of emergency before it occurs (Strohm, 1981).

Although faculty involvement in budgeting has been limited by both administrative resistance and faculty amibivalence, groundwork is being laid on many campuses for greater and more effective faculty participation (Floyd,1985). Faculty have begun to gain a better understanding of the budgetary process and its dynamics and boards of trustees and administrators are becoming more aware of the importance of process considerations in handling retrenchment and the greater acceptability of retrenchment measures if faculty are consulted about procedures and implementation (Floyd,1985).

Strong administrative and faculty leadership is necessary to assure faculty that discontinuance of programs does not mean a decline in quality. In fact it may be the only means of assuring quality and flexibility at the institution in the face of declining resources. But program

discontinuance should be based essentially on educational considerations determined by the faculty as a whole or an appropriate faculty committee. Program discontinuance should not be based on cyclical or temporary variations in enrollment or because of administrative mismanagement (overloading course, cancelling courses too early at registration).

With "preexigency planning" program closure is not necessarily a decision to dismiss tenured faculty. Laying off tenured faculty should always be a last resort. However, with declining enrollments and increasing budget restrictions many institutions are facing this last resort. To demonstrate that a state of financial exigency does exist the college must show that the termination of tenured faculty is designed to alleviate the financial exigency; that those terminated were fairly selected; and that the institution made a reasonable effort to find an alternative suitable position. However, based on the 1978 decision of the Fourth Circuit Court in Krotkoff vs. Goucher College "in the absence of an explicit contractual provision tenure does not entitle faculty to training for appointment in another area (Gray,1981,p.185)."

The question then becomes when should retraining take place and who should be retrained? There are several reasons why I agree with the AAUP statement that retraining should only take place when program discontinuance occurs for educational considerations and not because of financial

exigency. First, as long as decisions with academic implications are made by appropriate faculty committees, the discontinuance of particular programs may have less negative impact on an institution than the more generalized loss of vitality that would occur from across the board dismissals of junior or nontenured faculty (Strohm,1981). Second, I do not think that even a "master teacher" can teach all things equally well. An essential component of a good teacher's qualifications is his expertise or mastery of a discipline. Retraining a faculty member for one or two semesters cannot match hiring a candidate trained for years in that discipline.

Another crucial component of good teaching is motivation. A faculty member teaching in his primary area of expertise is usually highly motivated. A faculty member who is retrained, especially if there is little or no choice about the area in which retraining is to take place, may suffer from a definite lack of motivation. Are we settling for "second best" when we opt for retraining an older, possibly burned-out faculty member instead of selecting a new, perhaps more highly qualified candidate specifically trained in the discipline?

The academic vitality of a college depends on the quality of its faculty. To ensure that quality it is vital to maintain a mix of younger and older, junior and senior faculty members. That is not what is occurring on most college campuses today. We have an older, senior, highly

tenured faculty and a large essentially disenfranchised part-time and nontenure track faculty. A two-tiered system has developed and it further reduces faculty participation in governance since growing numbers of part-time and nontenured faculty are excluded by definition from full participation in departmental and institutional decision making and from any personal sense of sharing in the consequences of the decisions that are made (Strohm,1981).

The quality of the faculty also depends on the teaching qualifications of its faculty members. According to the Administrative Code of New Jersey, County Community Colleges Supplement, 6/21/82, the responsibility for determining teaching qualifications rests with the President of the College. At a minimum, the President should require a master's degree in all academic areas and its credentialed equivalent in nonacademic areas (e.g. medical technology). If a faculty member wants to teach in a different area than that for which he was hired and already holds a degree, he should pursue the academic coursework necessary for the new degree or certification. Tuition reimbursement is available at most institutions so the faculty member should show some initiative. Actually, at the present time, the President has more control over the qualifications of part-time faculty at the county colleges who are required by the Administrative Code to have a master's degree than he does over qualifications for full-time faculty who want to transfer to a new discipline or be retrained.

While the primary role for ensuring a high level of intellectual vitality on campus belongs to the faculty, faculty efforts alone are not sufficient. Faculty who continue their education beyond the first master's degree should be rewarded for their efforts by having scholarly growth and development count as an important standard in promotion. On the other hand, faculty who receive sabbaticals to complete dissertations or other degree requirements should be held accountable to do just that. In some instances faculty members who have received sabbaticals to complete degree programs not only failed to complete the requirements while on sabbatical but years later the degrees are still unfinished. Yet these same faculty members continue to be promoted.

The sabbatical leave, once the bastion of faculty development and academic renewal, is now being used almost exclusively for retraining faculty. Poor planning has not helped the situation. In one instance a faculty member received two sabbatical leaves within the last six years to be retrained twice in two different disciplines. This was compounded by the fact that next year this same faculty member will be on almost complete release time and will teach little, if at all, in either of the retrained disciplines. This is woeful administrative mismanagement.

We cannot afford to mismanage limited sabbatical leaves. With an aging, professionally less mobile faculty revitalization from sabbaticals is not a fringe benefit but

a necessity. Through good planning and faculty participation sabbaticals can be allotted for both retraining and scholarly growth and development. Not every tenured faculty member should automatically be considered for retraining. Criteria should include the academic distance to be covered; the initiative of the faculty member (has he begun taking courses or preparing for a new discipline?); the discipline that has been designated as needing more faculty; and the program that is being discontinued. Prime candidates for retraining should cover the smallest academic distance (e.g. mathematics to computer science). Just because there is a need for faculty in remedial English does not mean someone from medical technology should be retrained to teach English composition.

A good example of planning for retraining is illustrated by the following memo from the President of Bergen Community College to all faculty dated March 26, 1987.

> The College has identified mathematics as an area where there is an immediate need for additional full-time faculty. Any tenured faculty wishing to retrain in the area of mathematics should notify my office, in writing, no later than April 30, 1987.
>
> The faculty selected for retraining will be required to enroll full time in a Master's Degree program in Mathematics during the 1987-88 academic year. Release time, as well as tuition reimbursement commensurate with the course load will be granted. It is expected that the Master's Degree will be completed by August 30, 1988.

This program balances the needs of the College for new faculty and the responsibility of individual faculty members to seek retraining.

With the loss of some sabbaticals for the traditional purpose of academic renewal faculty must fight to maintain or increase budget support for research, visiting speakers, travel to professional conferences, and especially release time for scholarly growth and course development. Faculty must recognize the mutuality of institutional interests and self-interest and be willing to increase their range of academic expertise (Craven, 1981). Administrators must recognize the clear tie between the intellectual vitality of the faculty and the academic reputation of an institution and the even more firmly established tie between teaching excellence and the retention of students (Mayhew, 1979). Teaching excellence depends on continued scholarly growth and development.

After selection has occurred and faculty have been retrained there are additional problems that need to be addressed. What happens when the retrained faculty member transfers to a new division/discipline? Does the receiving department have any say in the matter? What about seniority?

Bergen Community College has already begun to grapple with these issues in 17 cases of requests for transfer (changing divisions) and cross-over teaching (staying in one division but teaching a course in another division or

discipline). A college-wide committee produced a very complicated three page list of recommendations that covered a variety of situations, noted more exceptions than rules and included "grandfather rights" to teach a course regardless of teaching qualifications. While I applaud the faculty participation that produced this document I think a more direct and simplified plan is needed. This plan would include the master's degree as the minimum teaching qualification and a dual seniority system. In a dual seniority system one system tracks the academic rank of the faculty member and total years of service at the College. Salary would be based on this system and it would be the criterion of seniority in cases of financial exigency when faculty layoffs might follow the order suggested by Kenneth Mortimer (1981,p.168).

1. Faculty members on part-time/temporary appointments.
2. Faculty members on full-time/temporary appointments.
3. Nontenured faculty in inverse order of continuous service within the institution.
4. Tenured faculty in inverse order of continuous service within the institution.
5. When two or more faculty members in 2,3 or 4 above have the same amount of continuous service, the faculty member withthe lesser rank shall be the first to be laid off.

The second system keeps track of the faculty member's seniority in the division or discipline for which he has been retrained or into which he has transferred. The retrained faculty member would be treated like a newly hired

faculty member in the discipline. All full-time tenured faculty already in the discipline would have greater seniority. Rank would have no bearing in this system. Only years of service within the discipline would be used as the criterion for course assignments, overload and summer session schedules.

Difficult choices lie ahead. All members of the academic community must be involved in these decisions. Faculty must become more informed about retrenchment measures and understand that they must participate in any decision that a state of financial exigency exists. There is no simple solution but selective faculty retraining as part of a strong faculty development program is a potentially valuable approach to managing faculty resources.

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